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First: "Payment by one is payment for all." Lord MANSFIELD in *Whitcomb v. Whiting*, 2 Doug. 652. Whether or not this case is authority for the broad proposition that payment by one, even after the statute has run, will revive as to the others is doubtful, although it is frequently so cited. The decision was never popular with the judiciary in England, *Atkins v. Tredgold*, 3 B. & C. 23, and has since been repealed by statute: Lord Tenterden's Act, 9 Geo. 4, Mercantile Law Amendment Act, 1856. It was at first followed in New York, *Smith, Admr. v. Ludlow*, 6 Johns, 267; *Johnson Admr. v. Beardslee*, 15 Johns. 3; *Patterson v. Choate*, 7 Wend. 441, but is completely overruled, *Walden v. Sherburne*, 15 Johns. 409; *Baker v. Stackpoole*, 9 Cow. 420; *Van Keuren v. Parmelee*, 2 Comst. 523; *Hixson v. Rodbourn*, 73 N. Y. Supp. 779. This theory is probably without support today. Second: Payment by one co-obligor sets a new starting point for the running of the statute as to all, if made before the period expires, Judge LAMAR in *Brewster v. Hardeman*, Dudley (Ga.) 138. This view is rejected in the principal case, partly, however, because of the fact that the spirit of the code made a change imperative. See also *State National Bank v. Harris*, 96 N. C. 118; *Regan v. Williams*, 88 Mo. App. 577. Third: One co-obligor has no authority to toll the statute as to the others, Judge STORY in *Bell v. Morrison*, 1 Pet. 351, and upheld in the principal case. *Exeterbank v. Sullivan*, 6 N. H. 124, *Hunter v. Robinson*, 30 Ga. 479. This is almost the universal doctrine today, as laid down by statutes and decisions.

TORTS.—OBSTRUCTION OF LEGAL REMEDIES—LIABILITIES.—The defendant in a civil action answered by a general denial and verified his answer, but asked no affirmative relief, and judgment was rendered against him. Defendant knew at the time he answered that the allegations of the petition were true. In an action brought by the plaintiff in the former action to recover for expenses incurred in obtaining proof to sustain the allegations of his petition, held, that defendant was not liable. *Baxter v. Brown et al.* (1910), — Kan. —, 111 Pac. 430.

The question here presented, *i. e.*, whether a successful plaintiff may maintain an action for the malicious defense of a former action, seems never to have been passed upon before by the Kansas court, and no reported case involving the question has been found. As to whether an action may be maintained for the malicious prosecution of a civil action where there has been no arrest of the person, seizure of property or special injury, the decisions of the courts are in irreconcilable conflict. See 19 AM. & ENG. ENCY. OF LAW, Ed. 2, pp. 651-2. Some of the courts denying this right give as one of the reasons therefor that if the defendant may sue for extra costs and expenses incurred in defending against an unfounded prosecution, the plaintiff ought to be allowed to bring a like action when the defendant makes an unfounded defense, *Smith v. Mich. Buggy Co.* (1898), 175 Ill. 619; *Wetmore v. Mellinger*, 64 Iowa 741, 18 N. W. 870; *Luby v. Bennett*, 111 Wis. 613; and it is rather difficult to see how this right can be denied in a jurisdiction in which an action for the malicious prosecution of a civil suit may be maintained. In the principal case, however, the Supreme Court of Kansas, though

admitting that action will lie for a malicious prosecution, denies the right to bring an action for a malicious defense, on the ground that no authority can be found for such an action and that one sued has the same right to defend himself as has one who is physically assailed. The decision of the principal case will probably be generally approved, because to permit such suits would make litigation almost interminable.

TRIAL—OPENING STATEMENT—DIRECTION OF VERDICT—POWER OF COURT.—In an action of forcible detainer, the attorney for the defense in making his opening statement to the jury admitted that the legal title was in the plaintiff. *Held*, that the court may not direct a verdict for the plaintiff on the opening statement of the defendant's counsel, because the defendant is entitled to have his issues made by the pleadings and evidence submitted to the jury. *Pietsch v. Pietsch et al.* (1910), — Ill. —, 92 N. E. 325.

The cases upon this point may be divided into three classes. First, those holding that the opening statement by counsel is not a solemn admission in court of facts material to the case, but that it is a mere recital of what facts counsel intend to disclose and as such is not sufficient grounds for a nonsuit, even though it might contain something that would, if established by evidence, be fatal to the cause of the plaintiff. *Fillingham v. St. Louis Transit Co.*, 102 Mo. App. 573; *Fletcher v. The London and Northwestern Ry. Co.* [1892] 1 Q. B. 122, 65 L. T. 605; *Sullivan v. Williamson*, 21 Okla. 844. Second, those holding that the court is warranted in acting on the admissions made by the parties during the trial of a cause; and when the plaintiff in making the opening statement of his case admits or states facts the existence of which absolutely preclude a recovery by him the court may close the trial at once and give judgment against him. *Lindley v. A. T. & S. F. Ry. Co.*, 47 Kan. 432, 28 Pac. 201; *Carr v. Del. L. & W. Ry. Co.*, — N. J. —, 75 Atl. 928. However the courts which follow this somewhat arbitrary rule are very cautious in its use. In the case of *Spicer v. Bonker*, 45 Mich. 630, 8 N. W. 518, Justice COOLEY says, "The right to direct a verdict for the plaintiff on the mere presentation of the plaintiff's case by his counsel is one that should be sparingly used and only when the court is sure that a full and complete presentation has been made." Again a nonsuit should not be granted on an opening statement unless it is plainly evident therefrom that no case can be made out. *Emmerson v. Weeks*, 58 Cal. 382; *Preusse v. Childwold Park Hotel Co.*, 119 N. Y. Supp. 98; *Brashear v. Rabenstein*, 71 Kan. 455, 80 Pac. 950. Third, those cases in which the plaintiff suffers a nonsuit not merely because of a failure to state a good cause of action as in the cases cited under the second division above, but because the opening statement discloses a contract or transaction *contra bonos mores*. Mr. Justice FIELD in the case of *Oscanyan v. The Winchester Repeating Arms Co.*, 103 U. S. 261, 26 L. Ed. 539, says "When it is shown by the opening statement of counsel for the plaintiff, that the contract on which the suit is brought is void as being either in violation of law or against public policy, the court may direct the jury to find a verdict for the defendant." *Crichfield v. Bermudez Asphalt Pav. Co.*, 174 Ill. 466; *Wight v. Rindskopf*, 43 Wis. 344.